

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA**

Oakland Courthouse, 1301 Clay Street, Oakland, California 94612

**RECEIVED**

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SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Tribunal - Unified United States Common Law Grand Jury**

P.O. Box 59; Valhalla, New York 10595

**TO -** Special Assistant U.S. Attorney Melinda L. Haag, FBI Agent Matthew Ernst, U.S. Marshal Donald O'Keefe, and Magistrate Judge William Haskell Alsup  
**Court of Origin -** UNITED STATES DISTRICT COURT CASE NO CR 05-00611 WHA, statutory  
FOR THE NORTHERN DISTRICT OF CALIFORNIA, de facto

Kurt F. Johnson and Dale Scott Heineman

Petitioner

Against

Special Assistant U.S. Attorney Melinda L. Haag, FBI Agent Matthew Ernst, U.S. Marshal Donald O'Keefe, and Magistrate Judge William Haskell Alsup

Respondents

**Assigned Judge:** Chief Judge Phyllis J Hamilton

**FEDERAL CASE NO. 1776-1789-2015, de jure**

**Writ Mandamus Coram Ipso Rege<sup>1</sup>**

**CONTEMPT OF COURT**

**THE GREAT WRIT OF LIBERTY** is "*the writ of habeas corpus and subjiciendum, issuing at common law out of courts of Chancery, King's Bench, Common Pleas, and Exchequer.*" Ex parte Kelly, 123 N.J.Eq. 489, 198 A. 203, 207. "*In the United States habeas corpus exists in two forms: common law and statutory. The Constitution for the United States of America acknowledges the Peoples' right to the common law of England as it was in 1789. It does not consist of absolute, fixed*

<sup>1</sup> KING'S BENCH. The supreme court of common law in England, being so called because the king used formerly to sit there in person, the style of the court being "coram ipso rege."

*and inflexible rules, but broad and comprehensive principles based on justice, reason, and common sense.*" *Miller v. Monsen*, 37 N.W.2d 543, 547, 228 Minn. 400. "*This is the well-known remedy for deliverance from illegal confinement, called by Sir William Blackstone the most celebrated writ in the English law, and the great and efficacious writ in all manner of illegal confinement.*" 3 Bl. Comm. 129.

**US Constitution Article I Section 9** The privilege of the writ of habeas corpus shall not be suspended.

**28 USC 2243** Issuance of writ; return; hearing; decision; A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto. The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days.

This court of justice has taken judicial notice of the Federal Rules of Civil Procedure, Title 28, United States Code, insofar as it is not repugnant to the common law. F.R.C.P. Rule 55 regarding default<sup>2</sup> is applied here.<sup>3</sup> The record shows that on August 7, 2015 the *Petition* was filed; a *Writ of Habeas Corpus to Show Cause* issued; the *Petition* and *Writ* were duly served upon the respondents; no Return was filed; a *Notice of Default* was filed on August 14, 2015. So, no claim may be made that the State court was unaware of this court's proceedings; nor, may the respondents claim they were unaware of the consequences for failure to make a Return on the *Writ of Habeas Corpus*. Simply stated; the parties against whom a Judgment for Affirmative Relief is sought, have failed to plead or otherwise defend, as provided by these rules; and, that fact has been brought before the court by Affidavit in accordance with F.R.C.P. Rule 55(a), see attached.

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<sup>2</sup> Federal Rules of Civil Procedure, Rule 55. Default: (a) Entry. When a party against whom a Judgment for Affirmative Relief is sought, has failed to plead, or otherwise defend, as provided by these rules; and, that fact is made to appear [has been brought before the court] by Affidavit or otherwise, the clerk shall enter the party's Default. (b) Judgment: Judgment by Default may be entered as follows: (1) By the Clerk: When the plaintiff's claim against a defendant is for a sum certain, or for a sum which can, by computation, be made certain, the clerk, upon request of the plaintiff, and upon Affidavit of the amount due, shall enter Judgment for that amount and costs, against the defendant, if the defendant has been defaulted for failure to appear, and is not an infant or incompetent person. (2) By the Court: In all other cases, the party entitled to a Judgment by Default, shall apply to the court therefor; but, no Judgment by Default shall be entered against an infant, or incompetent person, unless represented in the action by a general guardian, committee, conservator, or other such representative, who has appeared therein. If the party against whom Judgment by Default is sought, has appeared in the action, the party, or, if appearing by representative, the party's representative, shall be served with written Notice of the Application for Judgment at least three (3) days prior to the Hearing on such Application. If, in order to enable the court to enter Judgment; or, to carry it into effect; it is necessary to take an account, or to determine the amount of damages, or to establish the truth of any averment by evidence, or to make an investigation of any other matter; the court may conduct such Hearings; or, Order such references, as it deems necessary and proper; and, shall accord a right of trial by jury to the parties, when, and as required, by any statute of the United States. (c) Setting Aside Default: For good cause shown, the court may set aside an Entry of Default; and, if a Judgment by Default has been entered, may likewise set it aside, in accordance with Rule 60(b).

<sup>3</sup> Courts of record have an inherent power, independently of statutes, to make rules for the transaction of business. 1 Pet. 604, 3 Serg. & R. Penn. 253; 8 id. 336, 2 Mo. 98.

On August 14, 2015, the Grand Jury filed a Default and Memorandum of Decision of the Default (see attached) and thereby the de facto court was ordered to **ABATE AT LAW** all proceedings in and relating to UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, de facto, CASE NO. CR 05-00611 WHA, against Kurt F. Johnson and Dale Scott Heineman.

The above-named de facto Court ignored the Habeas Corpus; and, have yet to release Kurt F. Johnson and Dale Scott Heineman from illegal custody. After reviewing this case, we have concluded the following:

- (1) The court that prosecuted Kurt F. Johnson and Dale Scott Heineman was a statutory court; not a court of record;<sup>4</sup> and, therefore, had no Constitutional Authority to incarcerate.
- (2) Both the grand jury and trial jury were tampered with to secure statutory indictments and statutory prosecutions<sup>5</sup> by said court not of record under color of law.
- (3) There were no injured parties.<sup>6</sup>
- (4) There were no sworn affidavits.<sup>7</sup>
- (5) There was no due process.<sup>8</sup>
- (6) This was a political case with vindictive prosecution.

Because of the aforesaid conclusions; and, from information received, in that pressure is being applied upon both Kurt F. Johnson and Dale Scott Heineman to somehow stop the probing and actions of the Grand Jury's Judicial Review Board, let us be clear: neither Kurt F. Johnson or Dale Scott Heineman have the power to stop the involvement of the Unified United States Common Law Grand Jury in this investigation. We are far beyond that. Furthermore, vindictiveness has already been established; and, we are therefore warning all involved that if we become aware of any maltreatment, we will pursue all involved with kidnapping and torture charges to the fullest extent of the Common Law.

In conclusion, Special Assistant U.S. Attorney Melinda L. Haag, FBI Agent Matthew Ernst, U.S. Marshal Donald O'Keefe and Magistrate Judge William Haskell Alsup are in contempt of court; and, are herein ordered, one last time, to release Kurt F. Johnson and Dale Scott Heineman immediately as previously ordered by the Tribunal, see attached; or, we will bring this action before the full Grand Jury for Judicial Remedy upon all conspirators including all court officers who are providing felony rescue.

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<sup>4</sup> **COURTS OF RECORD and COURTS NOT OF RECORD** the former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. [3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heining v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231].

<sup>5</sup> *"The common law is the real law, the Supreme Law of the land, the code, rules, regulations, policy and statutes are "not the law", Self v. Rhay, 61 Wn (2d) 261; "There, every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowman without his consent." Cruden v. Neale, 2 N.C. 338 (1796) 2 S.E.*

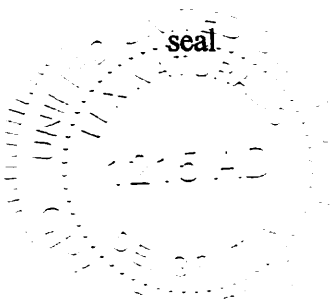
<sup>6</sup> *"For a crime to exist there must be an injured party. There can be no sanction or penalty imposed upon one because of this exercise of Constitutional rights." Sherar v. Cullen, 481 F. 945.*

<sup>7</sup> *"Indeed, no more than affidavits is necessary to make the prima facie case." United States v. Kis, 658 F.2d 526, 536 (7th Cir. 1981); Cert. Denied, 50 U.S. L. W. 2169; S. Ct. March 22, 1982*

<sup>8</sup> *Due course of law, this phrase is synonymous with "due process of law" or "law of the land" and means law in its regular course of administration through courts of justice [court of record]". Kansas Pac. Ry. Co. v. Dunmeyer 19 KAN 542*

This Court is gracing Special Assistant U.S. Attorney Melinda L. Haag, FBI Agent Matthew Ernst, U.S. Marshal Donald O'Keefe and Magistrate Judge William Haskell Alsup with the opportunity to amend their error and abate at law immediately all proceedings in and relating to UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, de facto, CASE NO. CR 05-00611 WHA, against Kurt F. Johnson and Dale Scott Heineman.

THE COURT November 6, 2015.



A handwritten signature in black ink, consisting of several loops and a long horizontal stroke.

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Unified United States Common Law Grand Jury Administrator

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**UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA**

1301 Clay Street, Oakland, California 94612:

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Kurt F. Johnson, and Dale Scott Heineman,  
Petitioners

<b>DEFAULT JUDGMENT CORAM IPSO REGE</b>
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Against

CASE # CR 05-00611 WHA

Special Assistant U.S. Attorney Melinda L. Haag, FBI Agent Matthew Ernst,  
U.S. Marshal Donald O'Keefe, and Magistrate Judge William Haskell Alsup,  
Respondents

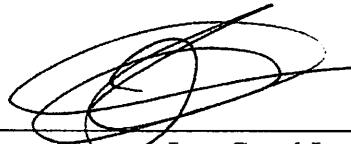
**Rule 55 Default; Default Judgment (a) Entering a Default:** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise [*under seal*], the clerk must enter the party's default. - FRCP Rule 55; Rule 58 (b) 2; 28 USC 2243

**DEFAULT JUDGMENT**

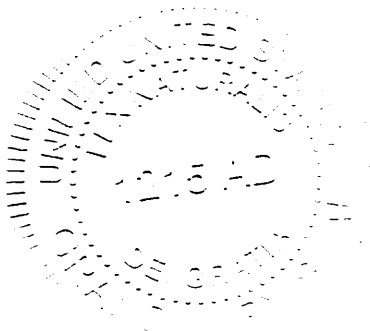
The Respondents against whom a judgment for affirmative relief is sought have failed to plead or otherwise defend as provided by these rules, and that fact is made to appear by affidavit. **NOW, THEREFORE, THIS COURT OF RECORD** issues this default judgment coram ipso rege to dispose of the matter as law and justice require, to wit:

**IT IS ORDERED AND ADJUDGED** that Petitioners be released from custody immediately, and that the respondents, namely **UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**, Special Assistant U.S. Attorney Melinda L. Haag, FBI Agent Matthew Ernst, U.S. Marshal Donald O'Keefe, and Magistrate Judge William Haskell Alsup, shall abate at law all proceedings in and relating to **UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**, Case No. CR 05-00611 WHA. No damages, costs, or attorneys' fees are awarded.

**THE COURT**, August 14, 2015



Unified United States Common Law Grand Jury Administrator



## **Affidavit for Default Judgment**

I, Monya Ballah, Affiant, being of lawful age, qualified and competent to testify to, and having firsthand knowledge of the following facts, do hereby swear that the following facts are true, correct, and not misleading:

On July 28, 2015 I filed a Petition for a Writ of Habeas Corpus, see attached; as is my unalienable right protected by the United States Constitution Article I Section 9 §2, with the Unified United States Common Law Grand Jury who served the Habeas Corpus with Petition upon UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA and respondents challenging jurisdiction, in the United States District Court for the Northern District of California as per United States Constitution Article III Section 1 whereas *"the Judicial power of the United States shall extend to all cases, in law and equity, arising under this Constitution"*.

*"Once challenged, jurisdiction cannot be 'assumed', it must be proved to exist."* Stuck v. Medical Examiners, 94 Ca2d 751.211 P2s 389; *"Jurisdiction, once challenged, cannot be assumed and must be decided."* Maine v. Thiboutot, 100 S. Ct. 250; *"No sanction can be imposed absent proof of jurisdiction."* Stanard v. Olesen, 74 S. Ct.768; *"The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings."* Hagans v. Lavine, 415 U.S. 528. Other cases such as McNutt v. G.M., 56 S. Ct. 789, 80 L. Ed. 1135; Griffin v. Mathews, 310 Supp. 341, 423 F. 2d 272; Basso v. U.P.L., 495 F 2d. 906; Thomson v. Gaskiel, 62 S. Ct. 673, 83 L. Ed. 111; and, Albrecht v. U.S., 273 U.S. 1; all confirm, that, when challenged, jurisdiction must be documented, shown and proven to lawfully exist before a cause may lawfully proceed in the courts. *"The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings."* Hagans v. Lavine, 415 U.S. 528.

On July 28, 2015, a Writ of Habeas Corpus Order to Show Cause and Writ Certiorari<sup>1</sup> issued, *see attached*, from the aforesaid Federal Court as per 28 USC §2243. Whereas the Grand Jury did file Writ of Habeas Corpus, as is the unalienable right of the King's Bench, presenting issues of both fact and law; and, thereby determining the applicant was entitled thereto; the Court ordered the respondents to Show Cause why the Writ should not be granted.

On August 14, 2015, all respondents defaulted. **WHEREAS:** the record shows that no respondent made any Return; no respondent requested more time to answer; no respondent provided any objection to the proceedings; **THEREBY:** law requires de facto court to abate at law and release of restraint on both person and property.

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<sup>1</sup> Writ Certiorari: Latin meaning to be informed of; to be made certain in regard to; the name of a Writ of Review or Inquiry. Leonard v. Willcox, 101 Vt. 195, 142 A. 762, 766; Nissen v. International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, 229 Iowa 1028, 295 N.W. 858.

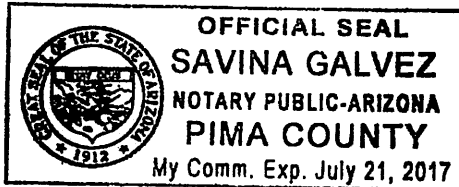
**Default Judgment; Entering a Default:** *"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by Affidavit or otherwise [under seal], the clerk must enter the party's default."* FRCP Rule 55(a); FRCP Rule 58(b)(2); 28 U.S.C. §2243.

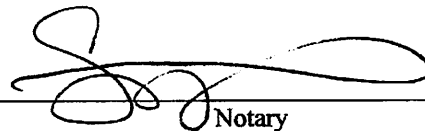
  
Monya Ballah

**NOTARY**

In Arizona State, Pima County, on this 2nd day of November, 2015, before me, Savina Galvez, the undersigned notary public, personally appeared Monya Ballah, to me known to be the living (wo)man described herein, who executed the forgoing instrument, and has sworn before me that he/she executed the same as his/her free will act and deed.

(Notary Seal)



  
Notary

My commission expires: July 21 2017

# Unified United States Common Law Grand Jury:<sup>1</sup>

P.O. Box 59; Valhalla, New York 10595; Phone: (845) 229-0044; Fax: (888) 891-8977; [US@uclgj.org](mailto:US@uclgj.org)

## UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Kurt F. Johnson, and Dale Scott Heineman,

Petitioners

CASE NO. CR 05-00611 WHA

Against

Special Assistant U.S. Attorney Melinda L. Haag,  
FBI Agent Matthew Ernst, U.S. Marshal Donald O'Keefe,  
and Magistrate Judge William Haskell Alsup;

Respondents

**DEFAULT JUDGMENT  
CORAM IPSO REGE  
FRCP Rule 55; Rule 58(b)(2)  
28 U.S.C. §2243**

COMES NOW THE ABOVE-ENTITLED COURT OF RECORD, to review the record, summarily determine the facts, and dispose of the matter as law and justice require.<sup>2</sup>

Habeas Corpus has been called "*The Great Writ of Liberty*". Historically, that is a side issue. In the early days Habeas Corpus was not connected with the idea of Liberty. It was a useful device in the struggle for control between common law and equity courts. "*By the middle of the fifteenth century, the issue of Habeas Corpus, together with privilege, was a well-established way to remove a cause against him from an inferior court where the defendant could show some special connection with one of the central courts conferring a right to have the case tried there.*"<sup>3</sup> In the early seventeenth century The Five Knights' Case<sup>4</sup> involved the clash between the Stuart claims of prerogative and the common law; and, was, in the words of one of the judges, "*the greatest cause that I ever knew in this court.*"<sup>5</sup> Over the centuries the Writ became a viable bulwark between the powers of government and rights of the People in both England and the United States.

<sup>1</sup> "The grand jury is an institution separate from the courts, over whose functioning the courts do not preside... The grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three [3] Articles. It is a constitutional fixture in its own right. In fact, the whole theory of its function is that it belongs to no branch of the institutional government, serving as a kind of buffer or referee between the Government and the [P]eople... The grand jury's functional independence from the judicial branch is evident both in the scope of its power to investigate criminal wrongdoing, and in the manner in which that power is exercised." United States v. John H. Williams; 112 S.Ct. 1735; 504 U.S. 36, 118 L.Ed.2d 352 [1992]; "Unlike a court, whose jurisdiction is predicated upon a specific case or controversy, the grand jury 'can investigate merely on suspicion that the law is being violated, or even because it wants assurance that it is not.'" United States v. R. Enterprises, 498 U.S. 292, 297, 111 S.Ct. 722, 726, 112 L.Ed.2d 795 (1991).

<sup>2</sup> 28 U.S.C. §2243.

<sup>3</sup> See e.g. De Vine (1456) O. Bridg. 288; Fizerbert, Abridg. (1577), sub tit. 'Corpus Cum Causa'.

<sup>4</sup> Darnel's Case, 3 St. Tr. 1.

<sup>5</sup> Ibid., at 31 per Doderidge J.



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## I. SUMMARY

45 Oliver Wendell Holmes once wrote, *"I long have said there is no such thing as a hard case. I am frightened weekly, but always when you walk up to the lion and lay hold, the hide comes off and the same old donkey of a question of law is underneath."*<sup>6</sup> Duty falls upon this court of record to lay hold of the lion, unhide the underlying question of law, and dispose of the matter as law and justice require.<sup>7</sup>

50 On July 27, 2015, Kurt F. Johnson, and Dale Scott Heineman, People of the United States, filed in the above-entitled court of record a Petition for Writ of Habeas Corpus by People in state custody. The Petition invited this court's inquiry into the following:

- A. The cause of the restraint
- B. The jurisdictional basis of the restraint
- C. Prosecutorial vindictiveness
- 55 D. Reasonable apprehension of restraint of Liberty
- E. Strict compliance with statutory requirements
- F. Diminishment of rights

60 The Petition presented issues of both fact and law. It did not appear from the Application that the applicant was not entitled thereto; therefore, this court ordered the respondents to show cause why the Writ should not be granted. Explicit return instructions were included as part of the Order to Show Cause to enable the respondents to fulfill the Order. All respondents were duly<sup>8</sup> served with the Petition and Order to Show Cause. The record shows that no respondent made any Return; no respondent requested more time to answer; and, no respondent provided any objection to the proceedings.

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<sup>6</sup> 1 Holmes-Pottock Letters 156.

<sup>7</sup> 28 U.S.C. §2243.

<sup>8</sup> **Duly:** "...according to law in both form and substance." Black's 6<sup>th</sup>.

## ANALYSIS:

### II. JURISDICTION OF THIS COURT

It is the duty of any court to "...determine... whether it has jurisdiction..." even though that question is not raised, in order for the exercise of jurisdiction to constitute a binding decision.<sup>9</sup> We fulfill that duty by examining the sovereign power creating the court.

But, first, what is a court? It is the person and suit of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. Further, a court is: "*An agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof; and, of applying the sanctions of the law; authorized to exercise its powers in the course of law at times and places previously determined by lawful authority.*"<sup>10</sup> The source of the authority is acknowledged by the Preamble of the Constitution for the United States of America.<sup>11</sup> The People of the United States, acting in sovereign capacity, "*ordain*<sup>12</sup> and *establish*<sup>13</sup> this Constitution for the United States of America." The Constitution contains nothing that would diminish the sovereign<sup>14</sup> power of the People; and, no State may presume to do so.<sup>15</sup>

Further, the United States of America, and each member State, is a Republic,<sup>16</sup> which means that the People may act either directly or through their representatives.<sup>17</sup> Here the sovereign People are acting directly. Beyond ordaining and establishing the Constitution, what are the powers of the People? The People retain all powers to self-determine and exercise rights.<sup>18</sup> The essence of the People's sovereignty distills to this: "*The decree of the sovereign makes law.*"<sup>19</sup>

<sup>9</sup> State ex rel. Missouri Gravel Co. v. Missouri Workmen's Compensation Commission, 113 S.W.2d 1034, 234 Mo.App. 232.

<sup>10</sup> Isbill v. Stovall, Tex.Civ.App., 92 S.W.2d 1067, 1070; Black's 4<sup>th</sup>, p425.

<sup>11</sup> "*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*" Constitution for the United States of America, Preamble.

<sup>12</sup> **Ordain:** ...to enact a constitution or law. Black's 6<sup>th</sup>.

<sup>13</sup> **Establish:** ...to create, ratify, or confirm... Black's 6<sup>th</sup>.

<sup>14</sup> "...at the Revolution, the sovereignty devolved on the people; and, they are truly the sovereigns of the country; but, they are sovereigns without subjects... with none to govern but themselves..." Chisholm v. Georgia, (U.S.) 2 Dall 419, 454, 1 L Ed 440, 455 @Dall 1793 pp471-472.

<sup>15</sup> "*Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.*" Miranda v. Arizona, 384 U.S. 436, 491; The State cannot diminish rights of the People. Hurtado v. California, 100 U.S. 517 (1884); "*The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the People.*" Constitution for the United States of America, Amendment IX; "*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*" Constitution for the United States of America, Amendment X.

<sup>16</sup> "*The United States shall guarantee to every State in this Union a Republican Form of Government...*" Constitution for the United States, Article IV, Section 4.

<sup>17</sup> **Government: Republican Government:** One in which the powers of sovereignty are vested in the people; and, are exercised by the people, either directly, or through representatives chosen by the people, to whom those powers are specially delegated. In re Duncan, 139 U.S. 449, 11 S.Ct. 573, 35 L.Ed. 219; Minor v. Happersett, 88 U.S. 162, 22 L.Ed. 627 (1875) 21 Wall. 162; Black's 6<sup>th</sup>.

<sup>18</sup> The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative. Lansing v. Smith, 4 Wend. 9 (N.Y.) (1829), 21 Am.Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7.

<sup>19</sup> The very meaning of "*sovereignty*" is that the decree of the sovereign makes law. American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047.

Some have argued that the People have relinquished sovereignty through various contractual devices in which rights were not expressly reserved. However, that cannot hold because rights are unalienable.<sup>20</sup> The People retain all rights of sovereignty at all times.<sup>21</sup> The exercise of sovereignty by the People is further clarified when one considers that the Constitutional government agencies have no genuine sovereign power of their own. All just authority of the Constitutional government agencies is solely that to which the People consent.<sup>22</sup> In the Petition, the petitioner identifies himself as “a People<sup>23</sup> of the United States”. As such he decrees the law for this court; and, ultimately, for this court as a court of record. This, then, is the sovereign power by which this court is created. The Constitution for the United States of America mandates that: “The judicial Power<sup>24</sup> shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...”<sup>25</sup> This is a case in law, i.e., proceeding according to the common law in a court of record. This case arises under the Constitution and the Laws of the United States. It follows that “the judicial power” of [the People of] the United States “shall extend” to this case. Therefore, it is the Grand Jury, as arbiter, that shall be enforcer of the law. We read:

“If any of our civil servants shall have transgressed against any of the People in any respect; and, they shall ask us to cause that error to be amended without delay; or, shall have broken some one of the articles of peace or security; and, their transgression shall have been shown to four (4) Jurors of the aforesaid twenty-five (25); and, if those four (4) Jurors are unable to settle the transgression, they shall come to the twenty-five (25), showing to the Grand Jury the error which shall be enforced by the law of the land.” Magna Carta, June 15, A.D. 1215, 61.

Justice Powell, in *United States v. Calandra*, 414 U.S. 338, 343 (1974), stated: “The institution of the grand jury is deeply rooted in Anglo-American history; [n3] In England, the grand jury [p343] served for centuries, both as a body of accusers, sworn to discover, and present for trial, persons suspected of criminal wrongdoing; and, as a protector of citizens against arbitrary and oppressive governmental action. In this country, the Founders thought the grand jury so essential to basic Liberties, that they provided, in the Fifth Amendment, that federal prosecution for serious crimes can only be instituted by a ‘Presentment or

<sup>20</sup> **UNALIENABLE:** Not subject to alienation; the characteristic of those things which cannot be bought, or sold, or transferred from one person to another, such as rivers, and public highways, and certain personal rights; e. g., Liberty. “*Unalienable: incapable of being aliened; that is, [not capable of being] sold or transferred.*” Black’s 4<sup>th</sup> 1891.

<sup>21</sup> **RESERVATION OF SOVEREIGNTY:** “[15](b) ...The Tribe’s role as commercial partner with petitioners should not be confused with its role as sovereign. It is one thing to find that the Tribe has agreed to sell the right to use the land and take valuable minerals from it, and quite another to find that the Tribe has abandoned its sovereign powers simply because it has not expressly reserved them through a contract. To presume that a sovereign forever waives the right to exercise one of its powers unless it expressly reserves the right to exercise that power in a commercial agreement turns the concept of sovereignty on its head.” *Merrion Et Al., dba Merrion & Bayless, Et Al. v. Jicarilla Apache Tribe Et Al.* 1982.SCT.394.

<sup>22</sup> The words “sovereign state” are cabalistic words, not understood [rejected] by the disciple of Liberty, who has been instructed in our constitutional schools. It is our appropriate phrase when applied to an absolute despotism. The idea of sovereign power [vested] in Government of a Republic, is incompatible with the existence, and foundation, of civil Liberty; and, the rights of property. *Gaines v. Buford*, 31 Ky. (1 Dana) 481, 501.

<sup>23</sup> **PEOPLE:** ...considered as... any portion of the inhabitants of a city or country. Webster’s 1828 Dictionary. The word “People” may be either plural or singular in its meaning. The plural of “person” is “persons”, not “people”.

<sup>24</sup> **Judicial Power:** The power to decide and pronounce a judgment; and, carry it into effect between persons and parties who bring a case before court for decision. Power that adjudges upon, and protects, the rights and interests of persons or property; and, to that end, declares, construes, and applies the law. Black’s 6<sup>th</sup>.

<sup>25</sup> Constitution for the United States of America, Article III, Sect. 2, Clause 1.

115 *Indictment of a Grand Jury*.” Cf. *Costello v. United States*, 350 U.S. 359, 361-362 (1956).  
“*The grand jury’s historic functions survive to this day. Its responsibilities continue to include both the determination whether there is probable cause to believe a crime has been committed, and the protection of citizens against unfounded criminal prosecutions.*”  
*Branzburg v. Hayes*, 408 U.S. 665, 686-687 (1972).

#### 120 IV. COMITY

Comity is one court giving “*full faith and credit*” to the judicial proceedings of another court, provided that such proceedings do not violate its own rules. Though comity is not mandated, it is encouraged by Article IV, Section 1 of the U.S. Constitution.<sup>26</sup> However, comity does not mean that one court involuntarily gives up its jurisdiction to another court. Comity does not mean that one court must respect the improprieties of another court. Comity does not mean that one court must submit to the whim of another court. Further, comity cannot enter the equation when the question before the courts concerns which of the two courts has jurisdiction regarding the vindication of the rights of the petitioner. The protection of the petitioner’s rights from encroachment by the State is the innate responsibility of the federal courts.

130 In the United States Habeas Corpus exists in two forms: Common Law and Statutory. The petitioner has chosen Habeas Corpus at common law in a court of record. The Constitution for the United States of America acknowledges the Peoples’ right to the common law of England as it was in 1789. What is that common law? It does not consist of absolute, fixed and inflexible rules; but, broad and comprehensive principles based on justice, reason, and common sense...<sup>27</sup>

135 The common law is also the Magna Carta,<sup>28</sup> as authorized by the Confirmatio Cartarum, if the accused so demands.<sup>29</sup> The Confirmatio Cartarum succinctly says, “...*our justices, sheriffs, mayors, and other ministers, which, under us have the laws of our land to guide, shall allow the said charters pleaded before them, in judgment in all their points; that is, to wit, the Great Charter as the common law and the Charter of the forest, for the wealth of our realm.*”<sup>30</sup> In other words, the King’s men must allow the Magna Carta to be pleaded as the common law if the accused so wishes it.

140 Magna Carta says, “*Henceforth the Writ which is called Praeceptum shall not be served on anyone for any holding so as to cause a free man to lose his court.*”<sup>31</sup> In this case, the free man’s court is the court of record of the petitioner, as above entitled. The Constitution for the United States of America, Article III, Section 2-1, says, “*The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States...*” The judicial power is thusly extended to this Habeas Corpus case at law in the  
145 above-entitled court of record.

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<sup>26</sup> “*Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And, the Congress may, by general Laws, prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.*” Constitution for the United States of America, Art. IV, Sect. 1.

<sup>27</sup> *Miller v. Monsen*, 37 N.W.2d 543, 547, 228 Minn. 400.

<sup>28</sup> June 15, 1215, King John I.

<sup>29</sup> November 5, 1297, King Edward I.

<sup>30</sup> Confirmatio Cartarum, Article I, Clause 3.

<sup>31</sup> Magna Carta, Article 34.

The above-entitled court of record, invoking the extension of the judicial power of the United States upon a case in law, is proceeding according to the common law as sanctioned by the Constitution; and, considering the matter that has arisen under the Constitution and laws of the United States. As stated above, the rule of comity does not go to the extent of relieving federal courts from the duty of proceeding promptly to enforce rights asserted under the federal Constitution;<sup>32</sup> and, all considerations of comity must give way to the duty of a federal court to accord a citizen of the United States his right to invoke the court's powers and process in the defense or enforcement of his rights.<sup>33</sup>

This court accepts the duty obligation to proceed promptly to enforce rights asserted under the federal Constitution. Thus, this court has the subject matter jurisdiction to examine, and act, upon the Petition for Habeas Corpus. Further, the parties were duly served personally with a copy of the Petition and the Writ of Habeas Corpus thus this court has "*in personam jurisdiction*".

## V. PETITION

Title 28 of the United States Code<sup>34</sup> acknowledges that it is not the responsibility of the petitioner to know by what claim or authority the State acts; but, that the petitioner may inquire as to the cause of the restraint. Petitioner has requested an inquiry into the cause of restraint; but, none of the respondents has returned any statement of cause of the restraint. Therefore, this court may presume that there is neither legal nor lawful cause of restraint.

Petitioner has isolated five (5) points upon which he bases his Petition:

- A. The lack of cause of the restraint
- B. The lack of jurisdictional basis of the restraint
- C. Prosecutorial vindictiveness
- D. Reasonable apprehension of restraint of Liberty
- E. Strict compliance with statutory requirements
- F. Diminishment of rights

Because the respondents have made no Return, this court must rule solely upon the evidence before it, as provided by the petitioner. Seneca wrote, "*He who decides a case with the other side unheard, though he decide justly, is himself unjust.*"<sup>35</sup> Mindful of the wisdom of Seneca, we proceed.

This court has taken judicial notice of the Federal Rules of Civil Procedure, Title 28, United States Code, insofar as it is not repugnant to the common law. FRCP Rule 55 regarding default<sup>36</sup> is applied here.<sup>37</sup> The

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<sup>32</sup> Everglades Drainage Dist. V. Florida Ranch & Dairy Corp., C.C.A.Fla., 74 F.2d 914, rehearing denied 75 F.2d 1013  
Carpenter Steel Co. v. Metropolitan-Edison Co., D.C.Pa., 268 F. 980.

<sup>34</sup> 28 U.S.C. §2242 states in part: "*Application for a Writ of Habeas Corpus... shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known.*"

<sup>35</sup> Seneca's Medea.

<sup>36</sup> Federal Rules of Civil Procedure Rule 55(a) **Entering A Default:** "*When a party against whom a Judgment for affirmative relief is sought, has failed to plead, or otherwise defend, [as provided by these rules;] and, that failure is shown by Affidavit or otherwise, the clerk shall enter the party's Default.*" (b) **Entering A Default Judgment:** Judgment by Default may be entered as follows: (1) **By the Clerk:** "*When the plaintiff's claim against a defendant is for a sum certain, or for a sum which can, by computation, be made certain, the clerk, upon request of the plaintiff, and upon Affidavit of the amount due, must enter Judgment for that amount and costs, against the defendant, if the defendant has been defaulted for failure to appear, and is not an infant or incompetent person.*" (2) **By the Court:** "*In all other cases, the party entitled to a Judgment by Default, shall apply to the court therefor; but, no Judgment by*

175 record shows that the *Petition* was filed; a *Writ of Habeas Corpus* to show cause issued; the *Petition* and *Writ*  
were duly served upon the respondents; no *Return* was filed; a *Notice of Default* was filed. So, no claim may  
be made that the State court was unaware of this court's proceedings; nor, may the respondents claim they  
were unaware of the consequences for failure to make a *Return* on the *Writ of Habeas Corpus*. Simply stated;  
the parties against whom a judgment for affirmative relief is sought, have failed to plead or otherwise defend,  
180 as provided by these rules; and, that fact has been brought before the court by Affidavit in accordance with  
FRCP Rule 55(a).

## VI. FINDINGS OF FACT

**THEREFORE, BASED UPON THE RECORD BEFORE THIS COURT:  
THE COURT FINDS THAT:**

- 185 (1) Kurt F. Johnson, and Dale Scott Heineman are People as contemplated in the Preamble of the  
Constitution for the United States of America.
- (2) This above-entitled court is a court of record.
- (3) All respondents were duly served; and, court personnel were apprised of the petitioner's claims and  
the Writ; all respondents had full notice and fair opportunity to argue their cause; and, respondents  
190 did not argue their cause.
- (4) The respondents have not presented any legal or lawful cause of the restraint of Kurt F. Johnson, and  
Dale Scott Heineman.
- (5) The respondents have not presented any jurisdictional basis for the restraint of Kurt F. Johnson, and  
Dale Scott Heineman. The court of the respondents did not fulfill the duty to determine whether it  
has jurisdiction in order for the exercise of jurisdiction to constitute a binding decision.
- 195 (6) The respondents have not presented any evidence to prove the absence of prosecutorial  
vindictiveness by the respondents against Kurt F. Johnson, and Dale Scott Heineman.
- (7) Kurt F. Johnson, and Dale Scott Heineman has a reasonable apprehension of future restraint of  
Liberty arising from the same facts.
- 200 (8) Strict compliance with statutory requirements was not met by the respondents.
- (9) Kurt F. Johnson, and Dale Scott Heineman has suffered an unlawful and illegal diminishment of  
rights.

## VII. CONCLUSIONS OF LAW

**FURTHER, THE COURT CONCLUDES THAT:**

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*Default shall be entered against an infant, or incompetent person, unless represented in the action by a general guardian, committee, conservator, or other such representative, who has appeared therein. If the party against whom Judgment by Default is sought, has appeared in the action, the party, or, if appearing by representative, the party's representative, shall be served with written Notice of the Application for Judgment at least three (3) days prior to the hearing on such Application. If, in order to enable the court to enter Judgment; or, to carry it into effect; it is necessary to take an account, or to determine the amount of damages, or to establish the truth of any averment by evidence, or to make an investigation of any other matter; the court may conduct such hearings; or, order such references, as it deems necessary and proper; and, shall accord a right of trial by jury to the parties, when, and as required, by any statute of the United States." (c) Setting Aside Default: "For good cause shown, the court may set aside an Entry of Default; and, if a Judgment by Default has been entered, may likewise set it aside, in accordance with Rule 60(b)."*

<sup>37</sup> Courts of record have an inherent power, independently of statutes, to make rules for the transaction of business. 1 Pet. 604, 3 Serg. & R. Penn. 253; 8 id. 336, 2 Mo. 98.

- (1) This above entitled court, has the sovereign authority to proceed as a court of record with jurisdiction to act in the instant case and subject matter.
- (2) Because all respondents were duly served; and, court personnel were apprised of the petitioner's *Petition* and *Writ*; and, because all respondents had full notice and fair opportunity to argue their cause; and, did not so do; and, because none of the aforementioned persons made a Return, objection, or Motion, the above-entitled court has acquired "*in personam jurisdiction*" of each of the respondents.
- (3) Because the respondents have not presented any legal or lawful cause of, or any jurisdictional basis for the restraint of Kurt F. Johnson, and Dale Scott Heineman, the respondents do not have any legal or lawful cause against or jurisdiction over Kurt F. Johnson, and Dale Scott Heineman.
- (4) Because the respondents have not presented any evidence to prove the absence of prosecutorial vindictiveness by the respondents against Kurt F. Johnson, and Dale Scott Heineman, and because the burden of proof is upon the respondents when evidence of prosecutorial vindictiveness has been presented, as a matter of law the respondents have committed prosecutorial vindictiveness against Kurt F. Johnson, and Dale Scott Heineman.
- (5) Strict compliance with statutory requirements were not met by the respondents, Kurt F. Johnson, and Dale Scott Heineman was denied due process, there is a reasonable probability that he will be denied due process, and there is a reasonable probability that Kurt F. Johnson, and Dale Scott Heineman will be subjected to future restraint of Liberty arising from the same facts.
- (6) Because Kurt F. Johnson, and Dale Scott Heineman has suffered an unlawful and illegal diminishment of rights Kurt F. Johnson, and Dale Scott Heineman will very likely continue to be subjected to further unlawful and illegal diminishment of rights if not immediately released.

## VIII. CONCLUSION SUMMARY

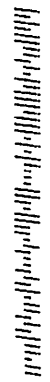
The respondents, namely UNITED STATES, de jure; Special Assistant U.S. Attorney Melinda L. Haag; FBI Agent Matthew Ernst; U.S. Marshal Donald O'Keefe; and Magistrate Judge William Haskell Alsup, by their Default (their failure to return the Writ of Habeas Corpus), have failed to prove their jurisdiction; therefore they each and all of them shall *abate at law* all proceedings in and relating to UNITED STATES FEDERAL DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, Case No. CR 05-00611 WHA.; and, restore Kurt F. Johnson, and Dale Scott Heineman to their former state.

None of the respondents is an infant or incompetent. None of the respondents has appeared in the proceedings.

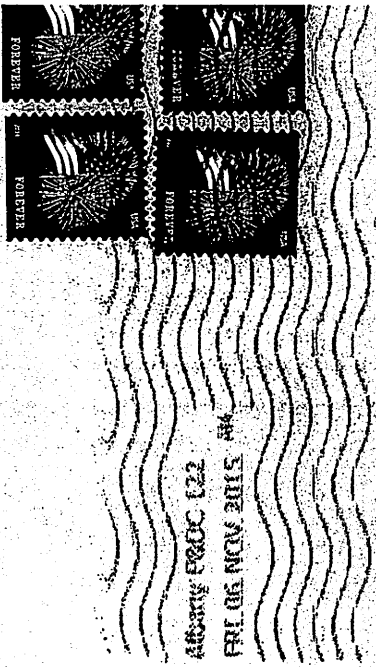
Default Judgment to be entered by this court in accordance with Federal Rules of Civil Procedure Rule 55(b)(2). Petitioner, if not already released, is to be released straightway.

THE COURT, August 14, 2015

  
Unified United States Common Law Grand Jury Administrator



Unified United States  
Common Law Grand Jury  
PO Box 99  
Valhalla, New York 10595



ALBANY PROC 122  
FRI 06 NOV 2015 AM

US DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA  
Judge William Haskell Alsup,  
450 Golden Gate Avenue  
San Francisco, CA 94102

